



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200943043

JUL 27 2009

Uniform Issue List 408.03-00

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SE: T: EP: RA: T4

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Certificate of Deposit Y = xxxxx

Financial Institution D = xxxxx

Individual B = xxxxx

Amount N = xxxxx

Amount O = xxxxx

Year 1 = xxxxx

Date 1 = xxxxx

Dear xxxxx:

This is in response to a letter ruling request dated March 30, 2009, as supplemented by correspondence dated May 1, 2009, that you submitted for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

200943048

The following facts and representations have been made subject to penalties of perjury:

Taxpayer A, age 62, represents that she went to Financial Institution D on Date 1 of Year 1 with the intent to roll over the entire account balance, Amount N, of IRA X, maintained by Financial Institution D, into another IRA to be maintained by Financial Institution D. Taxpayer A asserts that, due to error by an employee of Financial Institution D, Amount N was not rolled over timely into another IRA. Taxpayer A asserts that Amount N has not been used for any purpose and remains deposited with Financial Institution D.

Taxpayer A held IRA X in the form of a Certificate of Deposit (CD) maintained with Wachovia Bank. The CD holding IRA X was for three to six months at a fixed interest rate. Taxpayer A represents that on Date 1 of Year 1, shortly after IRA X had matured at three months and would have automatically renewed for another three months, she went to an office of Financial Institution D with the intent of rolling over IRA X and making an IRA contribution for the current calendar year. On Date 1, IRA X had a maturity value of Amount N.

Taxpayer A represents that Individual B, a financial specialist employed by Financial Institution D, told her that if she wanted to make an annual contribution for Amount O to IRA X, Individual B would have to close the current IRA CD and open a new IRA CD. Individual B then gave Taxpayer A paperwork to sign. Taxpayer A signed the paperwork and left the office of Financial Institution D with the understanding that Amount N had been rolled over into another IRA CD and that Taxpayer A had made a contribution of Amount O for calendar Year 1 to her IRA. Several months later, Taxpayer A received a Form 1099-R for Year 1 indicating that Amount N had been distributed to her.

Upon receipt of the Form 1099-R, Taxpayer A returned to the office of Financial Institution D, met with Individual B, and showed him the Form 1099-R indicating that Amount N had been distributed to her. Taxpayer A represents that review by Financial Institution D of records of the transaction showed that on Date 1, Taxpayer A signed a retirement account withdrawal confirmation and requested that no tax be withheld from Amount N and that Individual B also signed the form. In addition, the records showed that on Date 1, Taxpayer A withdrew Amount O from her savings account at Financial Institution D. Lastly, the records showed that on Date 1 an amount equal to Amounts N and O was deposited into Certificate of Deposit Y to be maintained by Financial Institution D on behalf of Taxpayer A. Certificate of Deposit Y is a non IRA CD for a longer fixed period and at a higher rate of interest than had been available under IRA X.

In a letter received as part of Taxpayer A's supplemental submission, Individual B admitted he made errors in handling the paperwork Taxpayer A signed on Date 1. In addition, Financial Institution D contacted the Internal Revenue Service and was informed about the letter ruling process for requesting a waiver

of the 60-day rollover period. The user fee for this ruling request has been paid by Financial Institution D.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount N from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including

casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount N of IRA X was caused by error committed by Financial Institution D.

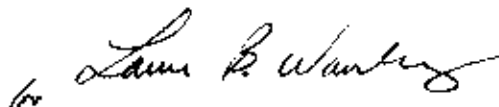
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount N from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute an amount equal to Amount N into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met contribution of Amount N will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact xxxxx, I.D. # xxxxx, by telephone at -xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose